Marriott In-Flite Services, a Division of Marriott Corporation *and* International Association of Machinists and Aerospace Workers, AFL-CIO. Case 29-CA-7913

November 3, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge duly filed by International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as the IAM, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint and notice of hearing, dated May 16, 1980, against Marriott In-Flite Services, a Division of Marriott Corporation, hereinafter referred to as Respondent. The complaint alleges that Respondent has engaged in certain unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing were duly served on the parties. Respondent filed an answer to the complaint, denying that it committed any unfair labor practices and setting forth certain affirmative defenses.

Thereafter, the parties entered into a stipulation of facts and jointly petitioned the Board to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and an order. The parties stipulated that the charge, the complaint, and the answer, as well as the transcripts and exhibits in *Marriott In-Flite Services, a Division of Marriott Corporation*, 258 NLRB No. 99 (1981),[1] constitute the entire record in this case and that no oral testimony is necessary or desired by any of the parties. The parties also waived a hearing before, and the making of findings of fact and conclusions of law by, an administrative law judge, and the issuance of an administrative law judge's decision.

On January 27, 1981, the Board issued its order approving the stipulation and transferring the proceeding to the Board. Thereafter, counsel for the General Counsel filed a brief in support of his position.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the stipulation, including the exhibits, the brief, and the entire record in this proceeding, and hereby makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent has at all times material herein been a Delaware corporation, with its principal office and place of business in Washington, D.C., and with various other places of business in the States of Maryland, New York, Florida, California, and other States. Respondent is, and has been at all times material herein, engaged in the airline catering, hotel, and restaurant service businesses. During the past year, a representative period, in the course and conduct of its business operations, Respondent purchased and caused to be shipped directly from firms located outside the State of New York to its facilities at John F. Kennedy International Airport and LaGuardia Airport, New York City, New York, food products, supplies, and other goods and products valued in excess of $50,000.

The parties have stipulated, and we find, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists and Aerospace Workers, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

Air Transport Lodge 1894, herein called Lodge 1894, is, and has been at all times material herein, a chartered local of the International Association of Machinists and Aerospace Workers, AFL-CIO, and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Facts*

On September 27, 1978, the Board certified Lodge 1894 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All employees of Respondent, employed at its Commissary, Kitchens and Terminal Facilities, including Shops 344, 370, 371, 374, 375, 376, 377, and 686, servicing airlines operating at John F. Kennedy International Airport and LaGuardia Airport in the Borough of Queens, New York City, New York, excluding all office clerical employees, professional employ-

[1] In that case the Board found, *inter alia*, that Respondent engaged in bad-faith bargaining, unlawfully implemented certain unilateral changes, and engaged in an unlawful withdrawal of recognition. The Board also found that Respondent did not have a reasonably based good-faith doubt as to Lodge 1894's continued majority status.

ees, guards and all supervisors as defined in Section 2(11) of the Act.

At all times since September 27, 1978, Lodge 1894 has been, and is presently, the exclusive collective-bargaining representative for the employees in the above-described unit.[2]

On March 29, 1980, Respondent raised by 11 percent the existing wages of, and granted an additional holiday to, all the employees in the above-described unit, without prior notice to the IAM and Lodge 1894, and without having afforded them an opportunity to negotiate and bargain with Respondent concerning such changes.

B. *Contentions of the Parties*

The General Counsel contends that Respondent violated Section 8(a)(5) and (1) by unilaterally granting the wage increase and additional holiday discussed above. Respondent contends that it engaged in the above conduct pursuant to its established practice of improving the wage-benefit package of its nonrepresented employees on a yearly basis at each of its facilities in the United States in order to keep its employment standards on a par with area standards. Respondent further contends that it engaged in the alleged unlawful conduct pursuant to its past practice of effectuating a nationwide policy to increase benefits on a yearly basis. Respondent also contends that on October 12, 1979, it withdrew recognition from Lodge 1894 as the exclusive collective-bargaining representative of the unit employees, based on Respondent's alleged good-faith doubt that Lodge 1894 represented a majority of the unit employees. Respondent further submits that it continued to withhold recognition from Lodge 1894 based on that good-faith doubt. Respondent did not file a brief in support of its contentions, and neither the IAM nor Lodge 1894 filed briefs.

C. *Conclusions*

In accordance with our decision in *Marriott In-Flite Services, a Division of Marriott Corporation, supra*, we find initially that Lodge 1894 has been at all times material herein the exclusive collective-bargaining representative for the employees in the above-described unit. We also find, consistent with that decision, that Respondent did not have a good-faith doubt when it withdrew recognition of Lodge 1894.

Further, we reject Respondent's contention that the wage increase and the additional holiday were granted pursuant to a policy of making annual improvements in wages and benefits in order to keep Respondent's employment standards on a par with area standards. The record discloses no evidence of such a policy.[3] We note further that the alleged policy as set forth in the stipulation applies only to Respondent's "non-represented" employees, and, as we have found, Lodge 1894 has been at all times material herein the collective-bargaining representative of the unit employees.

In view of the foregoing, we find that Respondent violated Section 8(a)(5) and (1) by granting unit employees an 11-percent wage increase and an additional holiday without prior notice to Lodge 1894 and without having afforded Lodge 1894 an opportunity to negotiate and bargain with Respondent concerning such changes.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the basis of the foregoing findings of fact, conclusions, and the entire record, we making the following:

CONCLUSIONS OF LAW

1. Marriott In-Flite Services, a Division of Marriott Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO, and Air Transport Lodge 1894, are, and at all times material herein have been, labor organizations within the meaning of Section 2(5) of the Act.

3. All employees of Respondent employed at its Commissary, Kitchens and Terminal Facilities, including Shops 344, 370, 371, 374, 375, 376, 377, and 686, servicing airlines operating at John F. Kennedy International Airport and LaGuardia Airport in the Borough of Queens, New York City, New York, excluding all office clerical employees, professional employees, guards and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for collective bargaining pursuant to Section 9(b) of the Act.

[2] See *Marriott In-Flite Services, a Division of Marriott Corporation, supra*, where the Board made the same finding.

[3] As noted previously, Respondent did not file a brief in support of its contentions.

4. At all times since September 27, 1978, Air Transport Lodge 1894 has been the exclusive representative of the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By granting unit employees an 11-percent wage increase and an additional holiday without prior notice to Lodge 1894 and without having afforded Lodge 1894 an opportunity to negotiate and bargain concerning such changes, Respondent has violated Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1), we shall order that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. We shall order Respondent to bargain upon request with Lodge 1894 with respect to the unilateral changes concerning the employees' wages and the additional holiday, and embody in a signed agreement any understanding which may be reached.

We shall also order Respondent to cease and desist from in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Marriott In-Flite Services, a Division of Marriott Corporation, New York City, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Implementing changes with respect to the wages and holidays of employees without notifying Air Transport Lodge 1894 and without affording Air Transport Lodge 1894 an opportunity to bargain over such changes; provided, however, that nothing in this Order shall be construed to require Respondent to withdraw any increased benefits found herein to have been granted unlawfully.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, bargain with Air Transport Lodge 1894 as the exclusive representative of the employees in the above-described unit with respect to changes in wages, rates of pay, hours, and other terms and conditions of employment, and embody in a signed agreement any understanding which may be reached.

(b) Post at its New York City, New York, place of business copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT implement changes with respect to the wages and holidays of employees without notifying Air Transport Lodge 1894 and without affording Air Transport Lodge 1894 an opportunity to bargain over such changes. Air Transport Lodge 1894 is the exclusive bargaining representative of the employees in the following appropriate bargaining unit:

All of our employees employed at our Commissary, Kitchens and Terminal Facilities, including Shops 344, 370, 371, 374, 375, 376, 377, and 686, servicing airlines operating at John F. Kennedy International Airport and LaGuardia Airport in the Borough of Queens, New York City, New York, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain collectively in good faith with Air Transport Lodge 1894 as the exclusive representative of the employees in the above-described unit with respect to wages, hours, and other terms and conditions of employment and, upon request, embody in a signed agreement any final understanding reached by the parties.

MARRIOTT IN-FLITE SERVICES, A DIVISION OF MARRIOTT CORPORATION